

REMARKS*Examiner Interview Summary*

Applicant thanks Examiner Al-Hashemi for the opportunity to discuss aspects of this case through a telephonic interview with Applicant's Representative Thomas W. Leffert on Wednesday July 29, 2009.

The Ballantyne et al. reference was discussed with reference to claims 103 and 107. Specifically, Applicant requested to discuss what elements of Ballantyne et al. corresponded to specific elements of Applicant's claims 103 and 107.

The Examiner indicated that the management information data, and specifically the account/billing information, corresponded to Applicant's bid amount. Applicant noted that if the account/billing information corresponded to Applicant's bid amount, then it would not satisfy remaining elements of Applicant's claims. For example, Applicant noted that there is no list of links or any other list in Ballantyne et al. that is purported to be ordered by a computer system, responsive to software and at least this account/billing information.

The Examiner indicated that a doctor selecting a patient record in Ballantyne et al. necessarily involves some level of ordering. Applicant noted that Ballantyne et al. does not indicate what order patient records are presented to a doctor, which makes this an inherency argument. However, Applicant contended that even an inherency argument would fail because the more likely ordering of patient records is by patient name or ID rather than any type of financial information, and inherency cannot be relied upon when there is an alternative. Applicant contended there would be no logical basis to order patient records by anything in Ballantyne et al. that could correspond to a bid amount as used in Applicant's Specification and claims as patient records would not be retrieved on that basis.

The Examiner further indicated that a link in Applicant's claims corresponded to the channels of Ballantyne et al. (column 5, line 44), that a digital information block was any digital information available to be downloaded, and that the second and third computer of Applicant's claims can be any computer shown in Figure 1 of Ballantyne et al.

Although the Examiner acknowledged that there appeared to be inconsistencies that would not allow the account/billing information of Ballantyne et al. to correspond to Applicant's bid amount, the Examiner indicated that additional review of the reference and further search would be required before being able to either issue a Notice of Allowance or a subsequent Office Action.

Applicant believes the foregoing Summary accurately reflects the substance and scope of the telephonic interview of Wednesday July 29, 2009. Applicant requests notification if the Examiner disagrees with the accuracy or completeness of the Summary.

In the Claims

Claims 106 and 108 are amended herein. Claims 178-196 are canceled hereby as unelected subject matter. Applicant reserves the right to pursue the same or substantially similar subject matter in a divisional application.

Claim Rejections Under 35 U.S.C. § 112

Claims 106 and 108 were rejected under 35 U.S.C. § 112, second paragraph. Specifically, the Office Action asserted that the phrase "can be" renders the claims indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. Applicant has amended claims 106 and 108 to address the rejection. Applicant thus respectfully requests reconsideration and withdrawal of the rejections, and allowance of claims 106 and 108.

Claim Rejections Under 35 U.S.C. § 102

Claims 103-108, 112, 152-153, 156-168, 170-175 and 177 were rejected under 35 U.S.C. § 102(e) as being anticipated by Ballantyne, et al. (U.S. Patent No. 5,867,821). Applicant respectfully traverses.

As noted in the Examiner Interview Summary, the account/billing information of Ballantyne et al. is asserted to correspond to Applicant's bid amount in claims 103 and 107, and the channels of Ballantyne et al. are asserted to correspond to Applicant's links in claims 103 and 107. Claim 103 recites, in part, "wherein a third computer of a third user is presented with a list

of links, and wherein the list is ordered by the computer system, responsive to the software and to at least the bid amounts associated with the links by the respective second users.” Claim 107 recites, in part, “wherein a third computer of a third user is presented with a list of links, and wherein the list is ordered by the first user’s computer, responsive to at least the bid amounts associated with the links by the respective second users.” Applicant contends the channels of Ballantyne et al. are not purported to be ordered responsive to its account/billing information. Instead, the channels of Ballantyne et al. are equivalent to CATV channels. *See*, Ballantyne et al., column 5, lines 16-19 (“Network channels are assigned in accordance with the service being provided, a channel being 6 MHz of bandwidth, equivalent to an analog CATV channel.”). Applicant contends there is no basis to assert that a list of network channels in Ballantyne et al. is ordered by anything other than numerical order, and certainly no basis to assert that they would be ordered based on any account/billing information. Because numerical ordering of CATV channels is notoriously well known, ordering of Ballantyne et al.’s network channels based on account/billing information cannot be said to necessarily flow from its teachings. *See*, MPEP § 2112 (“In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.” *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original)). As such, Applicant contends that Ballantyne et al. cannot teach or render obvious at least this element of claims 103 and 107.

Applicant further contends that the term “bid amount” necessarily imports a market component. *See*, Substitute Specification, page 42, first full paragraph, last sentence (“This process allows for the continuous negotiation of the bid price, i.e., it creates a free market environment.”). Thus, even if the channel numbers of Ballantyne et al. are used to sort the network channels, or a patient name or ID is used to sort a list a medical records of Ballantyne et al., this basis of ordering cannot correspond to Applicant’s bid amount.

In view of the foregoing, Applicant contends that claims 103 and 107 are patentably distinct from the cited reference. As claims 104-106, 152-153 and 156-165 include all patentable elements of claim 103, and claims 108, 112, 166-168, 170-175 and 177 include all patentable elements of claim 107, these claims are also believed to be allowable. Applicant thus

respectfully requests reconsideration and withdrawal of the rejections, and allowance of claims 103-108, 112, 152-153, 156-168, 170-175 and 177.

Withdrawn Claims

Applicant notes that withdrawn claims 154 and 155 include all patentable elements of allowable elected claim 103, and withdrawn claims 169 and 176 include all patentable elements of allowable elected claim 107. As such, claim 103 is necessarily generic to claims 154 and 155 and claim 107 is necessarily generic to claims 169 and 176. Applicant notes that it is entitled to examination of all claims that are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR § 1.141. Applicant thus respectfully requests rejoinder and examination of withdrawn claims 154, 155, 169 and 176.

CONCLUSION

Claims 106 and 108 are amended herein. Claims 178-196 are canceled hereby. Claims 103-108, 112, 152-153, 156-168, 170-175 and 177 are currently pending. Claims 154, 155, 169 and 176 are withdrawn, but Applicant has requested rejoinder.

In view of the above remarks, Applicant believes that all pending claims are in condition for allowance and respectfully requests a Notice of Allowance be issued in this case. Please charge any further fees deemed necessary or credit any overpayment to Deposit Account No. 501373.

If the Examiner has any questions or concerns regarding this application, please contact the undersigned at (612) 312-2204.

Respectfully submitted,

Date: 8 Sep 09

//Thomas W. Leffert//
Thomas W. Leffert
Reg. No. 40,697

Attorneys for Applicant
Leffert Jay & Polglaze

Customer No. 27073

T 612 312 2200

F 612 312 2250